IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 53 of 2001

Between:

1. V. Veera Raju, S/o. Rama Rao,
   R/o. Tanuku, West Godavari District.
2. V. Indira, W/o. Veera Raju,
   R/o. Tanuku, West Godavari District.

..... PETITIONERS

AND

The Commissioner,
Tanuku Municipality, Tanuku,
West Godavari District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction, preferably one in the nature of Writ of Mandamus, declaring the impugned Final Notice in Roc. No.225/98-27/B.O.I., dated 16-12-2000, issued by the respondent demanding a sum of Rs. 1,80,655/- from the Petitioners towards the fee for regularisation of alleged unauthorised construction of building in Ward No.37 of Tanuku Muncipality belonging to the Petitioners, as illegal, arbitrary, exorbitant, irregular and contrary to law, and consequently direct the respondent herein to drop further action in pursuance of the said impugned Notice.

Counsel for the Petitioner: MR.J.KANAKAIAH

Counsel for the Respondent: MR.S.NAGESWARA REDDY

The Court made the following:

ORDER:

For declaring the action of the respondent in issuing the impugned final notice in Roc.No.225/98-27/B.O.I., dated 16.12.2000 demanding a sum of Rs.1,80,655/- from the petitioners towards the fee for regularization of alleged unauthorized construction of the building in Ward No.37 of Tanuku Municipality belonging to the petitioners, as illegal, arbitrary and exorbitant, the present writ petition has been filed.

2. It is the case of the petitioners that they are the absolute owners of the said house plot having purchased the same long back and they applied for grant of permission for construction while paying the requisite fee of Rs.2,100/- along with proposed plan in the year 1998 and the permission was granted to the petitioners. According to the sanctioned plan, they proceeded with the construction and the construction work was completed in the year 1998. It is further contended that subsequent thereto, the respondent took an objection that the construction is in deviation of the sanctioned plan and they are liable to pay the extra fees for the alleged deviation. It is further contended that the respondent initiated the proceedings against them under Sections 209, 210 and 211 read with 340 of A.P. Municipalities Act and a Criminal Case was registered in S.T.C.55 of 1998 and the learned Judicial Magistrate of First Class has compounded the said offence and imposed a fine of Rs.300/- each, which they have already paid on 28.05.1998. It is further contended that having not satisfied with the imposition of fine, the respondent issued another notice as per the Building Regularisation Scheme under G.O.Ms.No.419, M.A. dated 30.04.1998 alleging that their house is being considered as a commercial construction and they are liable to pay the regularization fee at Rs.75/- per square feet and calculated the total amount of alleged deviation as Rs.1,80,613/-. Challenging the said order, the present writ petition has been filed.

3 . On the other hand, the respondent filed its counter denying all the allegations. It is stated in the counter that the petitioners made certain deviations, for which the respondent issued notice under Section 217 (1) and

(2) of A.P. Municipalities Act, 1965 dated 21.01.1998 duly informing about the deviations. But the petitioner did not comply notice conditions and hence, the respondent confirmed the provisional notice and issued confirmation order under Section 217(3) and 228(3) of A.P. Municipalities Act vide O.C.B.A.No.121/97, dated 06.02.1998. Even after the confirmation orders, the petitioners did not alter the deviated portions, and as such, the respondent has initiated the prosecution invoking the powers under Section 340 of A.P. Municipalities Act and filed charge sheet before the First Special Judicial II Class Magistrate Court in S.T.C.No.58 of 1998 and accordingly the petitioners were convicted and imposed a fine of Rs.300/- each. It is further contended in the counter that the building regulation scheme issued by the Government more particularly through G.O.Ms.No.419 M.A. dated 30.07.1998 empowering the Commissioner to regularize the unauthorized constructions. It is further contended that the calculation of penal amount in G.O.Ms.No.419, dated 30.07.1998 is Rs.10/- per square feet for the building used for residential purpose and Rs.75/- per square feet for commercial purpose and the rate imposed only on the basis of usage of building but not on the basis of land in use, and therefore, the writ petition is liable to be dismissed.

4 . Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondents.

5. I have gone through the entire material available on record. As seen from the impugned notice, it appears that the petitioners were directed to pay an amount of Rs.1,80,655/- for regularization of unauthorized constructions along with “B” form within three days, otherwise the unauthorized constructions would be demolished at any time. Further, except mentioning the G.O.Ms.No.419, dated 30.07.1998 no other particulars have been mentioned therein. Hence, I am of the considered view that the impugned notice is in utter violation of the principles of natural justice, and therefore, the same is liable to be set aside.

Accordingly, the writ petition is allowed. However, the respondent, after affording an opportunity of hearing to the petitioners and after considering their submissions, is at liberty to calculate the amount for regularization of the unauthorized constructions made by the petitioners as per the instructions given by the Government in G.O.Ms.No.419, dated 30.07.1998 and collect the same from the petitioners. No order as to costs.

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(ELIPE DHARMA RAO, J)

Date: 21.07.2005

Ksn

This Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki , the Acting Chief Justice on this the 21st day of July, Two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner,
Tanuku Municipality, Tanuku,
West Godavari District.

2. 2 CD copies

*Form-NIC-OGS/WP{**VVS**}*